

The Scottish Government has committed to licensing grouse shooting in Scotland.

Once the legislation passes through parliament, there will be implications for those who want to shoot grouse, as well as those who own and manage Scotland's grouse moors.

The 'Wildlife Management in Scotland' consultation is seeking views on the key provisions of the Wildlife Management (Grouse) Bill. This is the piece of legislation that will licence grouse shooting, as well as: licensing muirburn; further restricting where muirburn can take place; and further regulating the use of traps and snares.

This document is a guide to help those who shoot grouse with their consultation responses. **Respondents are free to add supplementary detail where appropriate and we encourage bolstering responses with evidence and case studies of their own experience.**

The consultation closes on **Wednesday 14<sup>th</sup> December**. Please ensure you make your voice heard.

To start the consultation, [click here](#).

## **Section 1 – Licensing of Grouse Shooting**

**1. Do you agree that the licensing of grouse shooting should be introduced to deter raptor persecution and wildlife crime linked to grouse moor management?**

Yes | ☒ No | Unsure

**2. If you answered 'No' to question 1, please state what other option/s you think we should consider (max 150 words).**

- The Scottish Government has insufficient evidence of higher levels of wildlife crime on grouse moors, or that grouse specific licensing would further deter crime.
- Existing penalties that apply under the criminal law and general licensing regimes are effective deterrents.
- It would be completely unacceptable to link the licensing of grouse shooting to 'wildlife crime' in the broadest sense.
- Such an approach would be disproportionate and inconsistent with the principle of equal treatment before the law.

**3. Do you agree that the landowner/occupier/person responsible for or accountable for the management decisions and actions should be responsible for acquiring and maintaining the licence for the taking of grouse on a particular piece of land?**

Yes | ☒ No | Unsure

**4. If you answered 'No' to question 3, please state what other option/s you think we should consider (max 150 words).**

- If licensing is introduced, then the person who holds the sporting rights should be responsible for maintaining and acquiring the license over the piece of land in question.
- In most cases this will be the landowner, or potentially a sporting tenant if the sporting rights have been assigned under the terms of a contract.
- The person holding the sporting rights should be permitted to authorise a third party to deal with the administrative aspects of the license on their behalf.

**5. Do you think that the person wishing to shoot grouse on land that they do not own, or occupy, should be required to check that the person who owns the land has a licence which allows for the taking of grouse on that area of land?**

Yes | ☒ No | Unsure

**6. If you answered 'No' to question 5, please state what other option/s you think we should consider (max 150 words).**

- Mandating a positive obligation to check that there is a license in place is an irrational proposal that delivers no discernible public benefit.
- There are no analogous examples where such a prescribed obligation is required. For example, there is no requirement to check that a pub or restaurant holds an alcohol license before consuming alcohol on the premises.
- The question refers to “the person who owns the land” having a license. However, the license may be held by a third party if the sporting rights have been assigned under the terms of a contract (see response to Q4).

*[You are encouraged to articulate how you would feel about there being a positive obligation to check that a license is in place before going shooting].*

**7. If we introduce a licensing scheme, do you agree that NatureScot should be the licensing authority?**

Yes | **No** | Unsure

**8. Do you think that a licence should be granted for a maximum period of one year (renewable on an annual basis thereafter)?**

Yes | **No** | Unsure

**9. If you answered ‘No’ to question 8, please state what other option/s you think we should consider (max 150 words).**

- Licenses should remain valid indefinitely unless or until ownership of the sporting rights changes.
- An annual licensing scheme therefore wastes NatureScot’s resources for no obvious public benefit, contrary to the principles of better regulation.

**10. Do you think that the civil rather than the criminal burden of proof is an acceptable test for the application of sanctions in relation to grouse moor licences? Please note that a civil standard of proof would require NatureScot to base their decision on the ‘balance of probabilities’ whereas a criminal standard of proof requires satisfaction ‘beyond reasonable doubt’.**

Yes | **No** | Unsure

**11. If you answered ‘No’ to question 10, please state what other option/s you think we should consider (max 150 words).**

- The consequences of losing the right to shoot grouse are significant. Land, businesses, jobs (and the homes attached to those jobs) would be lost. The downstream ecological and economic damage suffered by local communities would be significant.
- Given the gravity of the consequences, licenses should only be suspended in the event of a successful criminal prosecution, particularly due to the risk of sabotage by those who oppose grouse shooting.
- If the Scottish Government decides to apply the civil test, then procedural safeguards would need to be prescribed in primary legislation, specifically:
  - o The sole trigger for sanctions should be robust evidence of the license holder or someone acting on their behalf committing raptor crime on the estate. In other words, there needs to be a causal link between the license holder as an individual and the penalty.
  - o There would need to be a robust and independent statutory right to appeal to a court of law against any licensing decisions by NatureScot on the basis that they are:
    - Based on an error in law;
    - Based on an error of fact;
    - Unfair or disproportionate for any reason.
  - o Suspensions should not take effect until the appeal through court is determined, otherwise innocent parties would suffer irreparable damage pending appeal.
- Judicial review is not an effective remedy because it only allows for a review of the procedure followed by NatureScot.

**12. Do you agree that record keeping or reporting requirements should be part of the licence conditions? Please note that record keeping would involve noting down the activities carried out under the licence (e.g. the number of days on which grouse shooting took place, the number of grouse shot on each day, types of predator control undertaken, etc.) and providing**

these if/when they are requested. Reporting requirements would involve the active reporting of activities carried out under the licence on a regular basis.

Record keeping | Reporting requirements | **Neither**

**13. If you answered 'neither' to question 12, please outline why you believe this (max 150 words).**

- The proposed conditions have no rational connection to the policy aim of deterring raptor crime.
- The proposed conditions would disproportionately burden the licensee for little / no public gain.
- Predator control is not an activity that is exclusive to grouse shooting and information about the number of predators would deliver no public benefit in isolation. Singling out one sector for additional recording requirements would be inconsistent with the principle of equality of treatment before the law.

**14. Do you agree that, where a person holds a valid licence, and there is sufficient evidence to show that, on the balance of probabilities a wildlife crime has been committed on their property, NatureScot should have the power to impose the following penalties:**

- Issue a written warning
- Temporarily suspend a licence
- Permanently revoke a licence

Yes | **No** | Unsure

**15. If you answered 'no' to question 14, please outline why you believe this (max 150 words).**

- "Wildlife crime" (including the illegal killing of raptors) is not a social ill that occurs exclusively on grouse moors. It would not be consistent with the principle of equal treatment before the law to single sporting rights holders out for tougher civil sanctions compared to other categories of people. It cannot be that a farmer or the hill farmer suffers a much lower penalty for the same wrongdoing.
- The singular focus on the location of an alleged crime is illogical and unacceptable, particularly given the right to responsible access. If penalties are to be applied, they will be suffered by the sporting rights holder therefore there must be strong evidence of a causal link between the crime and them as an individual if penalties are to be applied.
- The Scottish Government and NatureScot need to recognise the real risk of sabotage against sporting rights holders by those who oppose grouse shooting.

**16. Please provide any further comments on the questions in this section here.**

*[You are encouraged to use this section to reflect on:*

- *the public benefits the grouse shooting sector delivers in economic, environmental and social terms and what local communities would lose if grouse shooting were to cease;*
- *cultural change within the sector in recent decades, including the professionalisation of gamekeeping and enhanced training requirements;*
- *and the effectiveness of the existing deterrents against raptor persecution (vicarious liability; long custodial sentences; general license restrictions).*

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## **Section 2 – Muirburn**

**17. Currently a licence is only required to undertake muirburn outwith the muirburn season. Do you agree that a licence should be required to undertake muirburn regardless of the time of year that it is undertaken?**

Yes | **No** | Unsure

**18. If you answered 'No' to question 17, please outline why you believe this (max 150 words).**

- Muirburn is a vital land management tool which is delivering evidenced benefits for biodiversity. Peer reviewed science has shown that numerous species benefit from it, including: curlew, golden plover, merlin, whinchat, red grouse and lesser redpoll.
- Muirburn is playing an increasingly important role in wildfire mitigation. NatureScot's recent review of muirburn recognised that there was "a plausible mechanism" through which muirburn can influence wildfire intensity via structural alterations to fuel load.
- Peer-reviewed evidence suggests that muirburn conducted every ten years is beneficial for plant species associated with peat formation, such as *sphagnum* moss.
- If licensing is introduced, it should take the form of an operator licence which is issued to practitioners upon successful completion of a foundation training module. This training has already been developed by the Scottish Fire and Rescue Service, the Scottish Gamekeepers' Association and NatureScot.

**19. If we introduce a licensing scheme, do you agree that NatureScot should be the licensing authority?**

☒ Yes | ☐ No | ☐ Unsure

**20. Do you agree that there should be a ban on muirburn on peatland unless it is done under licence as part of a habitat restoration programme approved by NatureScot?**

Yes | ☒ No | ☐ Unsure

**21. Other than for habitat restoration, public safety (e.g. fire prevention), and research, are there any other purposes for which you think muirburn on peatland should be permitted?**

☒ Yes | ☐ No | ☐ Unsure

**22. Do you agree that the definition of peat set out in the muirburn code should be amended to 40 cm?**

Yes | ☒ No | ☐ Unsure

**23. If you answered 'No' to question 22, please outline why you believe this (max 150 words).**

- The consultation paper provides no evidence to support refining the definition of peatland to "peat of a depth of 40cm or more".
- The intention to ban muirburn on the revised definition of peatland is inconsistent with the precautionary principle, as there has been no identification of an adverse impact of muirburn on peat deeper than 40cm. Indeed, NatureScot's recent review of muirburn states categorically that there is "a lack of evidence to determine the impacts of muirburn on different depths of peat".
- Compliance with the proposed ban on peat depth would be virtually impossible on a practical level. Land managers cannot be expected to measure the depth of every inch of their land using a peat probe – not least because it is environmentally damaging. It will be impossible for people to proceed with confidence that they are acting within the law.
- Peat depth alone cannot, therefore, be used as the means to determine where muirburn can / cannot take place.
- If the law as to where muirburn can and cannot take place is to change, then it must be (a) informed by science; and (b) capable of being complied with (possibly through the use of muirburn maps commissioned and/or approved by NatureScot).

**24. Please provide any further comments on the questions in this section here.**

*[You are encouraged to use this section to reflect on:*

- *the public benefits that muirburn is delivering with respect to reversing biodiversity loss, mitigating against wildfire and promoting carbon capture;*
- *the professionalisation of muirburning practices and the positive impact of modern equipment;*
- *and the lack of evidence to suggest that muirburning on sporting estates is responsible for wildfires.]*

**Section 3 of the consultation response refers to the further regulation of traps and snares. SLE is not the lead organisation on this topic, but it is recommended that advice is sought from the subject matter experts – namely the SGA, BASC or the GWCT.**

**For further information, please contact:**

**Ross Ewing**  
**Director of Moorland**

E: [ross.ewing@scottishlandandestates.co.uk](mailto:ross.ewing@scottishlandandestates.co.uk)

M: +44 (0) 7917 293 579

**Ashley McCann**  
**Legal Advisor**

E: [ashley.mccann@scottishlandandestates.co.uk](mailto:ashley.mccann@scottishlandandestates.co.uk)